

COURT OF APPEAL

11th January, 1995. 2.

Before Sir Godfray Le Quesne, Q.C., (President),
Sir Louis Blom-Cooper, Q.C., and
Sir Charles Frossard, K.B.E.

Between: Hambros Bank (Jersey) Limited Plaintiff
And: David Eves First Defendant
And: Helga Maria Eves (née Buchel) Second Defendant

Applications by the First Defendant for leave to appeal to Her Majesty in Council, adjourned on 30th September, 1994, following the dismissal by the Court, as then constituted, on that day, (*See Jersey Unreported Judgment of that date*) of his applications for an Order that:

- (1) the First Defendant be given leave to appeal (which application was refused by a Single Judge on 2nd June, 1994: *See Jersey Unreported Judgment of that date*) from the Judgment of the Royal Court (Samedi Division) of 26th May, 1994:
 - (a) dismissing the First Defendant's appeals from the summary Judgments of the Judicial Greffier of 23rd June, 1993, condemning the First and Second Defendants to pay to the Plaintiffs £100,000 by way of capital due, and of 11th January, 1994, condemning the First Defendant to pay to the Plaintiffs £28,121.06. by way of arrears of interest due;
 - (b) refusing the First Defendant's request for a stay of execution of the said Judgments of 23rd June, 1993 and 11th January, 1994, pending determination by the Royal Court of the action brought by the First and Second Defendants against the Tourism Committee of the States of Jersey;
 - (c) ordering that the costs of the Plaintiffs be paid by the First Defendant; and
- (2) execution of the said Judgments of 23rd June, 1993 and 11th January, 1994, be stayed for such period as the Court thinks fit or until both or one of the actions presently pending before The Royal Court between Mr. and Mrs. Eves (as First and Second Plaintiff) and Hambros Bank (Jersey) Ltd., (as Defendant), and

between Mr. and Mrs. Eves and the States of Jersey Tourism Committee shall have been determined.

The First Defendant did not appear.
The Second Defendant on her own behalf.
Advocate A.P. Roscouet for the Plaintiff.
Advocate J.G.P. Wheeler *Amicus Curiae*, convened
at the Court's request.

JUDGMENT

THE PRESIDENT: This application arises in an action which was instituted in 1993 by the Plaintiffs, Hambros Bank (Jersey) Limited against two Defendants, Mr. and Mrs. Eves.

5 In 1988, the Bank had granted to Mr. Eves a loan of £100,000 by way of home mortgage. They required that Mrs. Eves should guarantee Mr. Eves' liability and this she did, and on 27th May, 1988, a simple conventional hypothec was passed before the Royal Court. Payment of capital due under that loan very soon fell into
10 arrears. So, too, did payments of interest and after some intervening dealings and the extension of a certain amount of indulgence by the Plaintiffs this action was, in due course, started claiming what was due under the loan agreement, both from Mr. Eves as principal debtor and also from Mrs. Eves as guarantor.

15 In that action the Plaintiffs' issued an application for judgment under Rule 7 of the Royal Court Rules, 1992, as amended. This application came before the Judicial Greffier on 23rd June, 1993. He granted the final judgment and in the reasons which he delivered for his decision he remarked that it was an extremely
20 straightforward and simple case. That observation appears to me to have been fully justified.

25 There was an appeal from that order to the Royal Court. Before dealing with the appeal from that order I should mention that subsequently, on 11th January, 1994, the Greffier, on a further application of the Plaintiffs, granted them leave to enter summary judgment for the sum of £28,000 odd, that was interest
30 overdue.

35 Both those orders of the Greffier were appealed to the Royal Court and the Royal Court gave its decision on 26th May, 1994. As far as Mr. Eves was concerned they dismissed the appeal. As far as Mrs. Eves was concerned, they allowed the appeal and gave her unconditional leave to defend on the basis that they were not fully satisfied that the Plaintiffs had carried out the

formalities which the terms of the guarantee required before claiming the sums which they did claim from Mrs. Eves.

5 Because the order made, according to the accepted principles which define final and interlocutory orders, was an interlocutory order, Mr. Eves needed the leave, either of the Royal Court or of this Court in order to appeal. He asked the Royal Court for leave on 26th May, 1994, and was refused.

10 On 2nd June, 1994, he applied to the Bailiff as a single Judge of this Court for leave to appeal but was refused. However, the Bailiff did grant him a stay of the execution of the judgment which the Greffier had permitted until the matter could be argued before the full Court.

15 It did come before this Court as fully constituted on 13th July, 1994. On that occasion Mr. Petit appeared on behalf of Mr. Eves. In the course of the hearing Mr. Petit informed us that Mr. Eves was unwilling to accept his advice and he (Mr. Petit) was therefore withdrawing from the case. Mr. Eves submitted that this withdrawal of counsel placed him in a difficulty and on this ground the Court adjourned the hearing of his application to the next sitting of the Court.

25 The next sitting was on 30th September, 1994. At that hearing Mr. Eves' application for leave to appeal duly came on and was dismissed.

30 Mr. Eves then applied to the Court for leave to appeal to Her Majesty in Council and the Court adjourned that application. It is in those circumstances that the application for leave to appeal to Her Majesty in Council comes before us now.

35 The provisions and the machinery for obtaining leave to appeal in civil matters from this Court to Her Majesty in Council are fully explained in two earlier judgments of this Court, the first is Forster -v- Harbours & Airport Committee (6th April, 1990) Jersey Unreported C.of.A., and the second is Showlag -v- Mansour (20th January, 1993) Jersey Unreported C.of.A. Since the matter has been dealt with very fully in those judgments, it is not necessary to go into it at any length here. I will only say that as the Court set out in its judgment in the latter case, Showlag -v- Mansour, the grant of leave to appeal is affected not only by Article 14 of the Court of Appeal Law, but also by the terms of the Order in Council of 1572 and the authoritative interpretation of that which was provided by the Judicial Committee in the case of Esnouf -v- A.G. of Jersey in the last century.

50 The terms of the Order in Council are (this deals simply with appeals from Jersey):

"No appeal in any cause or matter great or small will be permitted or allowed before the same matter be fully examined and ended by definitive sentence".

5 In giving the reasons of the Privy Council in the case of Esnouf -v- A.G. Lord Blackburn said:

10 **"The first question that arises in the case of an appeal from Jersey before we consider whether the appeal is one which it would be proper to grant is this: has the time for granting appeal come? Has it reached the position of being a matter decided by a definitive sentence?"**

15 It obviously follows from that that it is only from a definitive sentence deciding a matter that leave to appeal from this Court to Her Majesty in Council can be granted.

20 The order from which Mr. Eves seeks leave to appeal is that made by this Court on 30th September. As has been pointed out to us today, that was simply an order refusing leave to appeal. The rights of the parties were decided and decided definitely in this case by the Order of the Royal Court dismissing the appeal from the decision of the Greffier. There was no further appeal from that Order without leave. The Order made by this Court on 30th
25 September simply decided that leave would not be granted. The order which regulated the rights of the parties was not that order, but the order previously made in the Royal Court. It therefore follows that the Order made on 30th September is not an Order from which we have any jurisdiction to grant leave to
30 appeal.

35 I will only add one thing. A similar rule was established in Guernsey by the judgment of the Guernsey Court of Appeal in Havilland Estates -v- Channel Island Ceramics (18th January, 1993) Court of Appeal of Guernsey. In that case, having reached their decision on the principles which I have just outlined, the Court of Appeal of Guernsey went on to say, and I quote their language, that they drew additional comfort from the fact that the order with which they were dealing would in England have been classified
40 not as a final but as an interlocutory order. It may be helpful to point out that that was something to which the Court of Appeal of Guernsey referred, not as the basis of their decision, but simply as something from which they drew additional comfort.

45 The question whether an order of this Court is an order from which this Court has power to grant leave to appeal does not depend upon the technical considerations distinguishing final from interlocutory judgments. It depends upon the much more pragmatic test stated by Lord Blackburn: is it an order determining the
50 rights of the parties by a definitive sentence?

Finally it may be useful to add that this decision cannot prejudice the right of Mr. Eves to apply to Her Majesty in Council for special leave to appeal, whether from this Court's Order of 30th September, or from the Order of the Royal Court of 26th May, 1994. Whether he would be wise to make any such application is not a matter upon which I express any opinion. In my judgment, this application must be dismissed.

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SIR LOUIS BLOM-COOPER: I agree.

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SIR CHARLES FROSSARD: I have nothing more to add, and also agree.

Authorities.

Royal Court Rules, 1992, as amended: Rule 7.

R.S.C. (1995 Ed'n): Rule 59/1/29; 59/1A.

Forster -v- Harbours & Airport Committee (6th April, 1990) Jersey
Unreported C.of.A.

Showlag -v- Mansour (20th January, 1993) Jersey Unreported C.of.A.

Havilland Estates -v- Channel Island Ceramics (18th January, 1993)
Court of Appeal of Guernsey.

Rose -v- Humbles (Inspector of Taxes) [1972] 1 All ER 314.